

***EX PARTE* PRESENTATION OF
SANYO ELECTRIC CO., LTD., SAMSUNG TELECOMMUNICATIONS AMERICA, LLP,
ERICSSON INC, AND SONY ERICSSON MOBILE COMMUNICATIONS INC.**

The *Second Report and Order* has greatly benefited the public. Precisely as it was intended to do, the decision has resulted in tremendous improvements in analog 911 call processing.

- As the Commission recognized, at the time the *Second Report and Order* was adopted, it was “common” for wireless handsets operating in analog mode for 911 calls to use an A-only or B-only system. At that time, if a user made a 911 call in analog mode, and its preferred carrier was on the A system, the handset would never seek to place the call on the B system, even if there was no signal on the A system. At the time the *Second Report and Order* was adopted:
 - Many handsets operating in analog mode did not switch to the non-preferred carrier’s system during a 911 call attempt if there was no signal on the preferred carrier’s system. **Now they do.**
 - Many handsets operating in analog mode did not switch to the non-preferred carrier’s system during a 911 call attempt if there was a signal on the preferred carrier’s system but the call could not be completed (*i.e.*, Conversation State could not be reached) on the preferred carrier’s system. **Now they do.**
 - Many handsets operating in analog mode did not incorporate separate programming for 911 calls so that users were faced with the choice of either incurring roaming charges for non-911 calls or never switching to the non-preferred provider’s system for a 911 call. **Now handsets have this capability.**
 - Many handsets operating in analog mode did not provide any feedback, let alone effective feedback, during a 911 call attempt. **Now they do.**
- The A/B-IR method as proposed would have permitted three scans of the preferred system before seeking to complete the 911 call with the non-preferred system, which could result in call-set up times of 48 seconds or longer. As a result of the requirements of the *Second Report and Order*, this is not permitted, thereby greatly reducing call set-up times.
- In the *Second Report and Order*, the Commission approved methods that improved the existing status quo. The Commission expressly and repeatedly found that none of the methods it approved were final solutions, that all had limitations and disadvantages, and that it hoped future solutions would provide further improvements.

WCA's interpretation is inconsistent with the *Second Report and Order* viewed in its entirety. In the *Second Report and Order*, the Commission wished to improve 911 performance for wireless phones operating in analog mode and sought to impose rules that could be implemented quickly, rather than rules that would require many years to implement. Accordingly, the Commission clearly indicated that it was imposing rules that would not require significant changes to the applicable standards or the handsets themselves and that could be implemented within months, not years. Moreover, the Commission did not intend to impose rules that would require actions by third parties, which would only further delay implementation of the rules. WCA's interpretation is inconsistent with the following:

- *The Applicable Standards.* WCA's interpretation would have required major changes to the applicable analog standards.
- *The Technical Limitations of Handsets.* WCA's interpretation is inconsistent with the technical limitations of the handsets.
- *The Impact on Third Parties.* WCA's interpretation would require that third-parties, such as base station owners and wireless carriers, make changes to their equipment and networks in order to enable Joint Petitioners to comply with the *Second Report and Order*.
- *Time to Comply.* WCA's interpretation would require such major changes to the standards, the phones, and the networks, that if the Commission intended to adopt WCA's interpretation it would have given the Joint Petitioners several years to comply with its rules. Only nine months were allowed for handsets to come into compliance.

The Commission imposed the 17 second condition to address a significant disadvantage of A/B-IR as proposed – namely, that call set up times would be too lengthy and a caller may hang up on a call that otherwise would eventually have been completed.

- The Commission recognized that a caller hanging up on a call because of overly lengthy call set-up times was a type of lock-in, if the call otherwise would eventually have been completed. The Commission explicitly stated in the *Second Report and Order* that it imposed the 17-second condition to address this “problem”. The Commission then reiterated this point by further expressly stating that it imposed the 17-second condition to minimize the possibility that callers would terminate 911 calls that would have eventually been completed.
- In paragraph 36 of the *Second Report and Order*, the Commission discusses that a significant disadvantage of A/B-IR as proposed “involves the length of call-set up times.”
- In paragraph 37, the Commission states in part that “we remain concerned that the A/B-IR approach proposed could result in excessively long call set-up times.”

- In paragraph 38, the Commission states that the proponents of A/B-IR indicate that the duration of call-set up times prior to seeking to transmit the call via the non-preferred carrier can be adjusted and reduced in several ways, most obviously by limiting the number of scans of the preferred carrier's control channels to one or two attempts prior to trying to place the call with the non-preferred carrier.
- In paragraph 39, the Commission states that "[b]ased on this record, we find it appropriate to require that Automatic A/B Roaming-IR meet two conditions to address this problem." There is no doubt what the phrase "this problem," refers to –lengthy call set up times, another form of lock-in.
- In paragraph 40, the Commission addresses the fact that lengthy call set-up times could lead "callers to terminate 911 calls that eventually would have been completed." To "minimize this possibility," the Commission concluded that "a time limit should be placed on the initial attempt to set-up the call with the preferred carrier." That is, the Commission clearly imposed the 17-second condition to minimize the possibility that callers would terminate 911 calls that would have eventually been completed – *i.e.*, to address the problem of lengthy call set-up times.

The WTB's Nokia Ruling and Ericsson Ruling, issued in the past year, clearly establish that Joint Petitioners' position is correct, and are wholly inconsistent with WCA's position.

- *WTB's Nokia Ruling.* The Bureau unambiguously stated that the 17-second time limit refers to access attempts –*i.e.*, if the access attempt is unsuccessful within such period, the handset must then try another network. Moreover, WTB unambiguously described when an access attempt is unsuccessful: "access attempts are deemed unsuccessful if the handset has not received a voice or traffic channel assignment within 17 seconds."
- *WTB's Ericsson Ruling.* WTB was asked to confirm that Ericsson's call completion methodology approved by the Bureau, which Ericsson clearly informed the Commission treats a call as completed with the assignment of a voice or traffic channel, complies with Commission requirements. In response, WTB found that the Ericsson method fully comports with "the Commission's 911 call processing rules."

WCA has argued throughout this proceeding and in the litigation that the law is clear in its favor. Ironically, WCA's actions show that it cannot even decide itself what it believes the law requires. While WCA has repeatedly criticized Joint Petitioners' position because WCA, wrongly, claimed the Commission required that the handsets switch to the non-preferred provider unless there was receipt of the voice transmission by the landline carrier, even WCA appears to finally have conceded that such is not required. These continual changes in position show the weakness of WCA's arguments and undercut its own position that the law is clear.

- WCA had originally argued in the litigation that the handsets must switch to the non-preferred provider unless the PSAP receives the call.
- Later in the litigation, and in the Petition filed by WCA at the Commission, WCA argued that the handsets must switch to the non-preferred provider if and only if the landline carrier does not receive the call.
- Only weeks later, in its more recent filing, WCA changed its position once again. Now WCA argues that the handsets must switch to the non-preferred carrier if and only if the base station does not receive the supervisory audio tone (SAT) from the handset.
- WCA offers only one method that it claims would meet this recently articulated requirement and satisfy its definition of call completion. Specifically, WCA argues that use of the fade timer and SAT functionality present in the analog standard would have enabled compliance with WCA's interpretation of the 17-second requirement without a change in the standard.
 - WCA's suggested method is not consistent with the analog standard, could not have been implemented without changes to the standard, and is based on factual inaccuracies that constitute, at best, a misreading of the standard and a misunderstanding of SAT functionality. It is clear that this method, the only method suggested by WCA as both compliant with its definition of call completion and feasible within the economic and time constraints of the *Second Report and Order*, is neither.
 - WCA has offered no substantive evidence to support its claim that modifications in accordance with its definition of call completion could have been implemented within the limitations explicitly established by the Commission.
 - As Joint Petitioners have stated and WCA appears to have conceded, WCA's suggested method is premised in large part on WCA's assertion that the analog standard imposes a five-second limit on the base station fade timer. This premise is simply false.
 - WCA's suggested method also is premised on WCA's assertion that the presence of SAT is an effective proxy to determine adequacy of voice transmission. This premise also is false.

- Even if the base station timers were standardized and SAT provided a valid proxy for transmission of voice communications, WCA's suggested method could not work because of the 17-second requirement adopted in the *Second Report and Order*. The SAT approach could not have been intended by the Commission because the Commission could not reasonably have required an action that could not be completed in the time limit imposed.

WCA asks the Commission to consider the two sentences in paragraph 41 and footnote 52 upon which it relies in a vacuum. Paragraph 41 and footnote 52 were merely suggesting that the 17 second time limit was meant to act as a *proxy* for the determination of whether a call has been delivered to the landline carrier. In other words, if the handset has not received a voice channel assignment within 17 seconds, then it is less likely that the call will be connected to the landline carrier on the present system and the handset therefore should attempt the call on the next system.

WCA has been unable to cite even a single instance, since adoption of the *Second Report and Order*, in which a wireless 911 call has not reached emergency personnel that would have otherwise done so if WCA's interpretation was followed. When asked by the Court in the multidistrict litigation if it was aware of a single such instance since adoption of the *Second Report and Order*, WCA responded that it is not.

As a result of handset manufacturers' voluntary incorporation of the capability to attempt to place 911 calls with digital carriers, in addition to the analog requirements of the *Second Report and Order*, the Joint Petitioners have greatly increased the chance that 911 calls will be successfully received because now the handset can also attempt to place the emergency call with digital carriers. Thus, Joint Petitioners are doing more than required under the law, not less.